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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

JINJU ZHANG, an individual;

Plaintiff,
vs.

BENLIN YUAN, an individual; HONG LIN, an individual; CAMIWELL, INC., a California corporation; CAMIWELL, INC. (CANADA), a Canadian corporation; BEIJING ASIACOM INFORMATION TECHNOLOGY CO., LTD., a Chinese corporation; ASIACOM AMERICAS, INC., a Virginia corporation; BANK OF AMERICA CORPORATION, a National Association; and DOES 1 to 20, inclusive,

Defendants.

Case No.: 3:23-cv-05818-CRB

**COUNTER-CLAIM DEFENDANT JINJU
ZHANG'S NOTICE OF MOTION AND
MOTION TO DISMISS BENLIN YUAN'S
AMENDED SHAREHOLDER DERIVATIVE
COUNTERCLAIM FOR TURNOVER
UNDER FRCP RULE 12(B)(6)**

Date:

Time:

Judge: Hon. Vince Chhabria

Courtroom: 4 – 17th Floor

AND RELATED CROSS-ACTIONS

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT on _____, 2024 at _____, or as soon thereafter as the matter may be heard, in the United States District Court for the Northern District of California, San

COUNTER-CLAIM DEFENDANT JINJU ZHANG'S NOTICE OF MOTION AND MOTION TO DISMISS BENLIN YUAN'S AMENDED SHAREHOLDER DERIVATIVE COUNTERCLAIM FOR TURNOVER UNDER FRCP RULE 12(B)(6)

1 Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California, in Courtroom 4 on
 2 the 17th Floor before the Honorable Vince Chhabria, Counter-Claim Defendant Jinju Zhang (“Zhang”)
 3 will move to dismiss the Amended Shareholder Derivative Counterclaim for Turnover by Counter-
 4 Claimant Benlin Yuan (“Yuan”) for failure to state a claim upon which relief can be granted under
 5 Federal Rules of Civil Procedure Rule 12(b)(6).

6 This Motion is made on the grounds that Yuan’s Amended Shareholder Derivative Counterclaim
 7 for Turnover fails to state a claim upon which relief can be granted under Federal Rules of Civil
 8 Procedure Rule 12(b)(6) and is based upon this Notice of Motion and Motion, the attached Memorandum
 9 of Points and Authorities, the supporting declaration of Dennis Chin filed herewith, the Request for
 10 Judicial Notice, any opposition and reply briefs, the oral arguments of the parties and evidence presented
 11 at the hearing of the motion, and the complete files and recorded for this action.

12 **STATEMENT OF RELIEF REQUESTED**

13 Zhang moves to dismiss Yuan’s Amended Shareholder Derivative Counterclaim For Turnover
 14 for failure to state a claim upon which relief can be granted under Federal Rules of Civil Procedure Rule
 15 12(b)(6) because Yuan failed to comply with the pleading requirements for a complaint in a derivative
 16 action as set forth in Federal Rules of Civil Procedure Rule 23.1. Yuan failed to verify the Amended
 17 Shareholder Derivative Counterclaim for Turnover. Yuan also failed to allege that his Amended
 18 Shareholder Derivative Counterclaim is not a collusive one to confer jurisdiction that the court would
 19 otherwise lack, and he failed to state with particularity any effort that he obtained the desired action
 20 from the directors and shareholders of Camiwell, Inc. and the reasons for not obtaining the action or not
 21 making the effort. Additionally, Yuan defied the Court order to fix the pleading error and continued to
 22 demand that Zhang turn over the money to him directly. Accordingly, the Court should dismiss Yuan’s
 23 Amended Shareholder Derivative Counterclaim for Turnover.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 On May 15, 2024, the Court dismissed Yuan’s Counterclaim for Turnover against Zhang for
 27 lack of standing. Yuan alleged that Zhang possessed \$50,000 that belongs to Camiwell US. The Court
 28 stated that “if that money belongs to Camiwell US, then Yuan needed to bring a derivative claim to

1 recover it on the company's behalf. . . . Yuan did not do that; he is instead demanding that Zhang turn
 2 over the money to him directly. Yuan will have leave to fix this pleading error."

3 On May 24, 2024 in response to the Court's order, Yuan filed an Amended Shareholder
 4 Derivative Counterclaim for Turnover against Zhang. However, Yuan's Amended Shareholder
 5 Derivative Counterclaim fails to state a claim upon which relief can be granted because Yuan failed to
 6 comply with the pleading requirements as set forth in Federal Rules of Civil Procedure Rule 23.1 for
 7 Derivative Actions. Specifically, Yuan failed to verify the Amended Shareholder Derivative
 8 Counterclaim, allege that the action is not a collusive one to confer jurisdiction that the court would
 9 otherwise lack, and state with particularity any effort by him to obtain the desired action from the
 10 directors or comparable authority, and, if necessary, from the shareholders or members; and the reasons
 11 for not obtaining the action or not making the effort.

12 Additionally, Yuan defied the Court order and continued to plead that he should be entitled to
 13 the \$50,000 recovery by claiming in his prayer for relief, that "Zhang be ordered to turnover to Yuan
 14 the \$50,000 recovery that he obtained for Camiwell, Inc. in the State Court Case." Yuan is not the real
 15 party in interest in recovering money for Camiwell.

16 Therefore, the Court must dismiss Yuan's Amended Shareholder Derivative Counterclaim for
 17 failure to state a claim under 12(b)(6).

18 **II. PROCEDURAL HISTORY**

19 On May 15, 2024, the Court dismissed Yuan's Counterclaim for Turnover against Zhang for
 20 lack of standing. Yuan alleged that Zhang possessed \$50,000 that belongs to Camiwell US. The Court
 21 stated that "if that money belongs to Camiwell US, then Yuan needed to bring a derivative claim to
 22 recover it on the company's behalf. . . . Yuan did not do that; he is instead demanding that Zhang turn
 23 over the money to him directly. Yuan will have leave to fix this pleading error." *See Request for Judicial
 24 Notice, Exhibit A, a true and correct copy of the Order Regarding Motions to Dismiss Complaint and
 25 Motion to Dismiss Counterclaim filed on May 15, 2024. See also Declaration of Dennis Chin in support
 26 of Counterclaim Defendant Jinju Zhang's Motion to Dismiss Benlin Yuan's Amended Shareholder
 27 Derivative Counterclaim for Turnover under FRCP Rule 12(b)(6).*

28

1 On May 24, 2024 in response to the Court's order, Yuan filed an Amended Shareholder
 2 Derivative Counterclaim for Turnover against Zhang. *See Request for Judicial Notice, Exhibit B, a true*
 3 *and correct copy of Yuan's Amended Shareholder Derivative Counterclaim for Turnover. See also*
 4 *Declaration of Dennis Chin in support of Counterclaim Defendant Jinju Zhang's Motion to Dismiss*
 5 *Benlin Yuan's Amended Shareholder Derivative Counterclaim for Turnover under FRCP Rule 12(b)(6).*

6 In Yuan's Amended Shareholder Derivative Counterclaim, Yuan plead that he should be entitled to the
 7 \$50,000 recovery by claiming in his prayer for relief, that "Zhang be ordered to turnover to Yuan the
 8 \$50,000 recovery that he obtained for Camiwell, Inc. in the State Court Case." *See RJN, Exhibit B. at*
 9 *4, lines 9 – 13.*

10 **III. ARGUMENT**

11 Federal Rules of Civil Procedure Rule 12(b)(6) state that "Every defense to a claim for relief in
 12 any pleading must be asserted in the responsive pleading if one is required. But a party may assert the
 13 following defenses by motion: failure to state a claim upon which relief can be granted." *See FRCP*
 14 *Rule 12(b)(6).*

15 In derivative actions, Federal Rules of Civil Procedure Rule 23.1(b)(2) and (b)(3) provide that
 16 "the complaint must be verified and must allege that the action is not a collusive one to confer
 17 jurisdiction that the court would otherwise lack; and state with particularity any effort by the plaintiff to
 18 obtain the desired action from the directors or comparable authority and, if necessary, from the
 19 shareholders or members; and the reasons for not obtaining the action or not making the effort. *See*
 20 *FRCP Rule 23.1(b)(2) and (b)(3).*

21 Here, Yuan failed to verify the Amended Shareholder Derivative Counterclaim for Turnover as
 22 there was no verification attached to his pleading. Yuan also failed to allege that his Amended
 23 Shareholder Derivative Counterclaim is not a collusive one to confer jurisdiction that the court would
 24 otherwise lack, and he failed to state with particularity any effort that he obtained the desired action
 25 from the directors and shareholders of Camiwell, Inc. and the reasons for not obtaining the action or not
 26 making the effort.

27 Additionally, Yuan defied the Court order and continued to plead that he should be entitled to
 28 the \$50,000 recovery by claiming in his prayer for relief, that "Zhang be ordered to turnover to Yuan

1 the \$50,000 recovery that he obtained for Camiwell, Inc. in the State Court Case.” Yuan is not the real
2 party in interest in recovering money for Camiwell.

3 Therefore, the Court must dismiss Yuan’s Amended Shareholder Derivative Counterclaim for
4 failure to state a claim under 12(b)(6).

5 **IV. CONCLUSION**

6 For the foregoing reasons, Counter-Claim Defendant Jinju Zhang respectfully requests that the
7 Court dismiss Yuan’s Amended Shareholder Derivative Counterclaim for Turnover for failure to state
8 a claim upon which relief can be granted under Federal Rules of Civil Procedure Rule 12(b)(6).

9
10 Dated: June 6, 2024

Respectfully Submitted,

11
12 James Cai, Esq.

13 Brian A. Barnhorst, Esq.

14 Dennis Chin, Esq.

15 Attorneys for Plaintiff and Counter-Claim
16 Defendant, Jinju Zhang